

APPEAL NO. 020222
FILED MARCH 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 19, 2001. This hearing considered the claims of respondent (claimant) against appellant (carrier 1), Docket No. 1, and against respondent (carrier 2), Docket No. 2. The hearing officer found, based upon stipulations, that carrier 2 provided the employer's workers' compensation insurance from January 19, 2000, through January 19, 2001, and that carrier 1 provided the insurance from January 20, 2001, through the date of the hearing. The hearing officer determined that the claimant sustained a compensable occupational disease injury; that the date of that injury was _____; that the claimant provided his employer with timely notice of the injury; that the claimant did not have disability resulting from that injury; that on _____, the claimant sustained a new and distinct injury in the form of an acceleration, worsening, or enhancement of his preexisting carpal tunnel syndrome (CTS); and that the claimant had disability resulting from the _____, injury beginning on September 12, 2001, and continuing through the date of the hearing. Carrier 1 appeals on evidentiary sufficiency grounds the determinations that the claimant's date of injury is _____; that the claimant sustained a new injury on _____; and that the claimant had disability commencing September 12, 2001, and continuing through the date of the hearing. Carrier 2 filed a response, urging the sufficiency of the evidence to support our affirmance. The file does not contain a response from the claimant.

DECISION

Affirmed.

Carrier 1 contended that the claimant did not sustain a repetitive trauma injury; that if he did sustain such injury, the date of the injury was _____, the date he first saw a doctor and received a diagnosis; that the claimant did not sustain a new injury on _____, during the coverage period of carrier 1; and that since the claimant's only injury occurred during the coverage period of carrier 2, carrier 1 is not liable for benefits.

The claimant testified that for 23 years he performed the same job duties for a soft drink bottling company, including driving forklifts and trucks; loading and unloading soft drink products; manually loading soft drink dispensing machines, container by container, at various customer locations several days a week; stacking cases of soft drinks at the bottling plant; and cleaning up around the plant. He described in some detail the repetitious hand movements he made over the years, particularly with the hand loading of dispenser machines several days a week, including 35 to 40 machines at one location and 11 at another. The claimant further testified that although he was told by a doctor on _____, that he had CTS in his left wrist and although he wore a wrist brace for the first three months in 2001 without gaining much relief from numbness, weakness, and pain in that limb, it was not until he was seen by a referral doctor in July 2001 that he appreciated

that it was his work that had caused the CTS. Both he and the owner of the business testified to their conversation on _____, when the matter of the claimant's possibly having a workers' compensation claim was discussed. The claimant also stated that he was able to continue working despite his left wrist symptoms but that on _____, while carrying 50-pound cans of syrup, he experienced a sharp pain in his left wrist and was thereafter unable to work because his condition is much worse and his hand goes completely numb. The claimant also stated that the surgery proposed for his wrist has been deferred until his workers' compensation claim is resolved.

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. The claimant also had the burden of proving the date of injury. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of carrier 1 is **TEXAS BUILDERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. ROBERT SIDDON
TEXAS BUILDERS INSURANCE COMPANY
11612 RM2244, BUILDING 1
AUSTIN, TEXAS 78738.

The true corporate name of carrier 2 is **REPUBLIC UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MICHAEL E. DITTO
VICE PRESIDENT & CORPORATE SECRETARY
2727 TURTLE CREEK BLVD.
DALLAS, TEXAS 75219-4801.

Philip F. O'Neill
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge